Samuel Shepheard, John Scarlett, and *John Snell* for and on the behalf of themſelves and others the Creditors of *Richard Kent*, Eſq; Deceaſed by Judgment. } Appellants.

John Kent, Eſquire; and others Executors of the ſaid *Richard Kent*, *John* Earl of *Kildare* and others. } Reſpondents.

The Appellants C A S E.

Which is, whether an Executor ought to pay the Appellants Judgment-debts recovered againſt him on Bonds, before Debts by ſimple Contract, or Debts by Bond not reduced to Judgments.

THat *Richard Kent* Deceaſed having deviſed his Real and Perſonal Eſtate to his Executors for Payment of his Debts and Legacies, *John* Earl of *Kildare* and his Truſtees exhibited their Bill in Chancery againſt the ſaid Executors, to be paid a Debt of 8000 *l.* alledged to be due upon a Note under his Hand, whereby he Agreed to charge certain Lands with the payment of the ſaid Money, but never did charge the ſame.

28 *June* 1692. The Cauſe was heard, and the Court declared that by the ſaid Note or Agreement, the Lands therein mentioned were well charged in Equity with the ſaid 8000 *l.* and Intereſt, and therefore Decreed the ſame accordingly, and that all the ſaid *Richard Kent*'s real Eſtate, both Freehold and Copyhold ſhould be forthwith Sold to the beſt Purchaſer.

That as to the Moneys ariſing by the Sale of the ſaid Lands mentioned in the ſaid Note, the ſame were to be applied in diſcharge of the ſaid 8000 *l.* with Intereſt, and if the ſame ſhould not be ſufficient, then the remainder thereof was to be paid out of the profits of the ſame Lands, from the time of Exhibiting of the Earls Bill, to the time of ſuch Sale, and for that purpoſe the Reſpondents, the Executors were to Account for the Profits thereof, untill ſuch Sale, and if ſuch Profits, and the Moneys ariſing by ſuch Sale ſhould not ſatisfie the ſaid Earl's Debt, then the remainder thereof was to be paid out of the Teſtators Perſonal Eſtate, and to that end the ſaid Executors were likewiſe to account for the ſame Perſonal Eſtate. And it was further Ordered, that the Creditors of the ſaid Teſtator *Richard Kent* ſhould come in and prove their Debts, and receive ſatisfaction out of the Teſtators Perſonal Eſtate, and out of the Moneys to be raiſed by Sale of his real Eſtate *According to the courſe of Law* in payment of Debts by Executors or Adminiſtrators.

Novem. 1695. The Appellants, who were Bond Creditors, and had recovered Judgements thereon againſt the Reſpondents the Excutors Exhibited their Bill againſt the ſaid Earl of *Kildare* and his Truſtees, and the ſaid Executors complaining that they were real Creditors of the ſaid *Richard Kent* by Bond, that they were no Parties to the ſaid Earls Cauſe, which had been carryed on by Colluſion with the Executors, who never diſcloſed but purpoſely concealed the Appellants Debts, being of an higher nature than the Earls Debt, that the Appellants ought to have had an opportunity of conteſting the ſaid Earls Debt in that Cauſe, and praying by their ſaid Bill, that the ſaid Decree might be ſet aſide, or at leaſt, that the ſaid Earls Debt might not have preference before the Appellants Debts.

29 *June* 1696. The Appellants ſaid Cauſe came to be heard, ***But the Court declared they would not alter the Decree made in the ſaid Earls Cauſe,*** and diſmiſſed the Plaintiffs Bill, as to ſo much as ſought to impeach the ſaid Earls Decree, or to let in the Appellants to a ſatisfaction of their Debts out of the Lands mentioned in the ſaid Note before the ſaid Earl was ſatisfied his Demands. And it was further Decreed (though not Prayed by the ſaid Bill) that the Reſpondents the Executors ſhould come to an Account for their Teſtators Eſtate, having all Juſt Allowances made them. And the Maſter was to Examine what the Debts due to the Appellants amounted unto, and to State the ſame to the Court, and alſo to look into the Debt claimed by the Reſpondent *John Kent*, and if the ſame were a Juſt Debt, then the ſaid *Kent* was to retain ſo much of the Teſtators Eſtate in his hands as would ſatisfie the ſame, and alſo his Coſts before any of the other Creditors were paid.

And the Appellants were to appoint a Perſon to get in the Teſtators Eſtate, and as got in, the ſame, as alſo what ſhould be found remaining in the Executors hands after ſuch Deductions and Allowances, was to be applyed towards payment of the Teſtators Debts according to his Will.

That the Appellants being Creditors by Bond, and afterwards by Judgment ſo recovered, did not apprehend that the laſt Decree had altered the legal courſe of payment of Debts out of the Perſonal Eſtate by Executors or Adminiſtrators, but that their Judgment Debts ſhould be paid (at leaſt out of the perſonal Aſſets of the ſaid Teſtator) preferable to any Creditors by ſimple Contract, or by Bonds not reduced to Judgments, as by Law they are intituled to be paid. And therefore 800 *l.* of the Teſtators perſonal Eſtate being got in, and brought before the ſaid Maſter perſuant to the Decree.

22 *May* 1701. The Appellants petitioned the ſaid Court of Chancery that their Judgment Debts might be thereout paid in the firſt place.

12 *July* 1701. Upon the hearing whereof it was inſiſted by Council for the Creditors by Bond and ſimple Contract.

That the ſaid laſt mentioned Decree had in Expreſs words provided that all the ſaid Teſtators Debts ſhould be paid according to the ſaid Will, which muſt be intended of a payment in Equal degree, and that the ſaid Decree could not by any Order to be made upon ſuch Petition, be altered or controuled, whereupon the Court was of Opinion that the ſaid Decree did import that all the Creditors ſhould be equally paid, and therefore gave the Appellants no relief upon their ſaid Petition.

That then the Appellants applyed and obtained an Order for re-hearing the ſaid Cauſe, to the intent only to bring the ſame properly before the Court to be altered or explained, as to the preference of the Judgment-debts before the other Creditors by ſimple Contract, or Bonds not reduced to Judgments.

4 *May* 1702 The Cauſe was re-heard, but the ſaid Court of Chancery did not think fit to Relieve the Appellants, whereas the Appellants are adviſed that in caſe the ſaid Teſtator by his Will doth direct (which the Appellants are adviſed he does not) that his perſonal Eſtate, which by Law is to be applyed to ſatisfie the Appellants as Judgment-Creditors in the firſt place) ſhould be applyed to pay off all his Creditors proportionably, without reſpect to the nature of their Debts, ſuch direction is void, and contrary to the rules and practice both of Law and Equity, and that the Appellants are agrieved by the ſaid Decree made or conſtrued to be made in affirmance of ſuch direction of the Teſtators Will, and the ſame (as the Petitioners are adviſed) is Erronious.

Wherefore the Appellants (who acquieſce under the ſaid Earl of Kildare's *Decree) do humbly Appeal from the ſaid Decree of the Court of Chancery, made in the Appellants ſaid Cauſe, and all ſubſequent Orders and proceedings thereupon, and Pray the ſame may be* R V E R S E D : *And that the Appellants may have ſuch other Relief in the Premiſes as your Lordſhips in your Great Wiſdom ſhall think fit.*

H. POLEY.